

NY 238,832,617

addresses concurrently with service of those notices upon Tenant. *See* affidavits of service annexed as parts of **Exhibits J and K**.

3. After Tenant and its subtenants failed to vacate the Premises by the Termination Date set forth in the Termination Notice, Sidley commenced a holdover proceeding in the Civil Court of Bronx County by service of a notice of petition and petition dated February 12, 2008 (the “**Petition**,” **Exhibit L**). The Petition was also served upon Ruderman at various addresses. *See* affidavit of service annexed as part of **Exhibit L**.

4. Tenant did not interpose an answer to the Petition in the Holdover Proceeding. However, Goda Restaurants Corp. a/k/a Goda Restaurant Corp. d/b/a Pizza Hut (“**Goda Restaurant**”), an entity that apparently occupied the Premises as a subtenant of Tenant, answered and defended the Holdover Proceeding. By notice of motion dated March 3, 2008, Sidley moved in the Holdover Proceeding for an order granting summary judgment in its favor for the relief requested in the Petition. The motion contained an affidavit showing that the amount due through March 4, 2008 was \$127,867.83 (copies of the affidavit and pertinent exhibit are attached as **Exhibit N**; the balance of the motion has been omitted). The motion was also served upon Ruderman at various addresses (**Exhibit M**). Neither Tenant nor Ruderman submitted papers in opposition to the summary judgment motion. Goda Restaurant did oppose the summary judgment motion and it was ultimately denied.

5. On May 14, 2008, a trial of the Holdover Proceeding was conducted, and Goda Restaurant opposed Sidley’s case. By Decision and Judgment entered May 14, 2008 (**Exhibit P**), the Civil Court granted a judgment of possession in favor of Sidley and against Tenant and possible subtenants Statewide Management, Laughing Party and Goda Restaurant. Thereafter, a

warrant of eviction issued and, on June 24, 2008, the New York City Marshall evicted all occupants from the Premises.

6. Sidley commenced this action in March 2008 to recover all amounts owed to it under the terminated Lease together with Sidley's attorneys' fees incurred based upon Ruderman's absolute continuing guaranty of Tenant's obligations as set forth in the Guaranty. *See* Levine Aff., ¶ 13, **Exhibit F**. Copies of Sidley's complaint and Ruderman's answer are annexed hereto as **Exhibits A and B**.

7. Sidley has produced documents responsive to Ruderman's document demand and now moves for summary judgment on each of the three cases of action set forth in the complaint.

8. For the reasons set forth above and in the accompanying Levine Aff. and memorandum of law, Sidley respectfully requests that its motion be granted in its entirety together with such other relief as the Court deems appropriate.

  
HEATH B. KUSHNICK

Sworn to before me this  
15<sup>th</sup> day of July, 2008.

  
Notary Public

**MATTHIAS W. LI**  
**Notary Public, State of New York**  
**No. 02LI6133405**  
**Qualified in New York County**  
**Commission Expires Sept. 19, 2009**

# **EXHIBIT A**

JS 44C/SDNY  
REV. 12/2005

CIVIL COVER SHEET

08 CV FILE COPY 2513

Judge Pauley

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

SIDLEY HOLDING CORP.

## DEFENDANTS

MORTON RUDERMAN

MAR 12 2008

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Heath B. Kushnick, Esq. 212 801-9200

Greenberg Traurig, LLP,

200 Park Avenue, New York, New York 10166

## ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

This is an action for breach of contract. This Court has jurisdiction under 28 U.S.C. §§ 1332(a)(1) and 1332(c)(1).

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	[ ] 610 AGRICULTURE	[ ] 422 APPEAL		[ ] 400 STATE	
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY -	[ ] 620 FOOD & DRUG	[ ] 423 WITHDRAWAL		[ ] 410 ANTITRUST	
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT	LIABILITY	[ ] 625 DRUG RELATED			[ ] 430 BANKS & BANKING	
[ ] 130 MILLER ACT	LIABILITY	[ ] 365 PERSONAL INJURY	SEIZURE OF			[ ] 450 COMMERCE/CC	
[ ] 140 NEGOTIABLE	[ ] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	PROPERTY			RATES/ETC	
INSTRUMENT	SLANDER	[ ] 368 ASBESTOS PERSONAL	[ ] 630 LIQUOR LAWS	PROPERTY RIGHTS		[ ] 460 DEPORTATION	
[ ] 150 RECOVERY OF	[ ] 330 FEDERAL	INJURY PRODUCT	[ ] 640 RR & TRUCK			[ ] 470 RACKETEER INFL	
OVERPAYMENT &	EMPLOYERS'	LIABILITY	[ ] 650 AIRLINE REGS	[ ] 820 COPYRIGHTS		ENCED & CORRUPT	
ENFORCEMENT OF	LIABILITY		[ ] 660 OCCUPATIONAL	[ ] 830 PATENT		ORGANIZATION AC	
JUDGMENT	[ ] 340 MARINE	PERSONAL PROPERTY	SAFETY/HEALTH	[ ] 840 TRADEMARK		(RICO)	
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT		[ ] 690 OTHER			[ ] 480 CONSUMER CREDI	
[ ] 152 RECOVERY OF	LIABILITY	[ ] 370 OTHER FRAUD		SOCIAL SECURITY		[ ] 490 CABLE/SATELLITE	
DEFAULTED	[ ] 350 MOTOR VEHICLE	[ ] 371 TRUTH IN LENDING	LABOR			[ ] 810 SELECTIVE SERVI	
STUDENT LOANS	[ ] 355 MOTOR VEHICLE	[ ] 380 OTHER PERSONAL		[ ] 861 MIA (1395FF)		[ ] 850 SECURITIES/	
(EXCL VETERANS)	PRODUCT LIABILITY	PROPERTY DAMAGE	[ ] 710 FAIR LABOR	[ ] 862 BLACK LUNG (923)		COMMODITIES/	
[ ] 153 RECOVERY OF	[ ] 360 OTHER PERSONAL	PRODUCT LIABILITY	STANDARDS ACT	[ ] 863 DIWC (405(g))		EXCHANGE	
OVERPAYMENT OF	INJURY		LABOR/MGMT	[ ] 863 DIWW (405(g))		[ ] 875 CUSTOMER	
VETERANS BENEFITS			RELATIONS	[ ] 864 SSID TITLE XVI		CHALLENGE	
[ ] 160 STOCKHOLDERS SUITS			LABOR/MGMT	[ ] 865 RSI (405(g))		12 USC 3410	
[ ] 190 OTHER CONTRACT			REPORTING &			[ ] 891 AGRICULTURE AC	
[ ] 195 CONTRACT PRODUCT			DISCLOSURE ACT	FEDERAL TAX SUITS		[ ] 892 ECONOMIC	
LIABILITY			[ ] 740 RAILWAY LABOR ACT			STABILIZATION AC	
[ ] 196 FRANCHISE			[ ] 790 OTHER LABOR	[ ] 870 TAXES		[ ] 893 ENVIRONMENTAL	
			LITIGATION	[ ] 871 IRS-THIRD PARTY		MATTERS	
			[ ] 791 EMPL RET INC	20 USC 7809		[ ] 894 ENERGY	
			SECURITY ACT			ALLOCATION ACT	
						[ ] 895 FREEDOM OF	
						INFORMATION AC1	
						[ ] 900 APPEAL OF FEE	
						DETERMINATION	
						UNDER EQUAL AC	
						TO JUSTICE	
						[ ] 950 CONSTITUTIONAL	
						OF STATE STATUT	
						[ ] 890 OTHER STATUTOF	
						ACTIONS	

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.  
IF SO, STATE:DEMAND \$ \$127,867.83 OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN *x* IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding    ☐ 2a. Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from (Specify District)    ☐ 6 Multidistrict Litigation    ☐ 7 Appeal to Dist Judge from Magistrate Juc Judgment
- ☐ 2b. Removed from State Court  
AND at least one party is a prose litigant

(PLACE AN *x* IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF    ☐ 2 U.S. DEFENDANT    ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)    ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] 1 [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2 [X] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[X] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Sidley Holding Corp. c/o  
Greenberg traurig, LLP  
200 Park Avenue, 38th Floor  
New York, New York 10166  
Attn: Heath B. Kushnick, Esq.

New York County

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Morton Ruderman  
50 Salem Street  
Lynnfield, MA 01940

Essex County

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS    ☒ FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE 3/12/08 SIGNATURE OF ATTORNEY OF RECORD  
Heath B. Kushnick  
H2-1101

ADMITTED TO PRACTICE IN THIS DISTRICT  
[ ] NO  
[x] YES (DATE ADMITTED Mo. \_\_\_\_\_ Yr. \_\_\_\_\_)  
Attorney Bar Code #

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge **MAG. DOLINGER** is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

FILE COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Judge Pauley

----- X  
SIDLEY HOLDING CORP.,

Plaintiff,

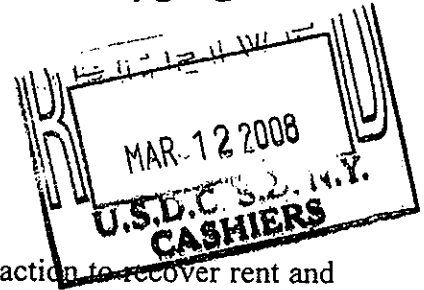
COMPLAINT

- against -

MORTON RUDERMAN,

Defendant.  
----- X

Index No. 08 CV 2513

PRELIMINARY STATEMENT

1. Plaintiff, Sidley Holding Corp. ("Plaintiff"), brings this action to recover rent and additional from defendant Morton Ruderman ("Defendant"), the guarantor of a commercial lease agreement by and between Plaintiff, as landlord, and non-party Three S's and an R, LLC ("Three S's"), as tenant.

PARTIES

2. Plaintiff is a domestic corporation.
3. Upon information and belief, Defendant is a natural person residing in the City of Lynnfield, County of Essex, State of Massachusetts.
4. Upon information and belief, non-party Three S's is a domestic limited liability company.
5. Plaintiff is the owner and landlord of the building located 110-112 East Fordham Road, Bronx, New York 10468 (the "Building").
6. Three S's was a tenant of commercial space (the "Premises") in the Building pursuant to a lease that was heretofore terminated as a result of Three S's default in the payment of rent.

7. Upon Information and belief, Three S's and/or individuals or entities in possession of the Premises with the permission of the Three S's, remain in possession of the Premises to date and operate a Pizza Hut restaurant therefrom.

8. Defendant is the personal guarantor of Three S's obligations under the Lease.

### **JURISDICTION**

9. This Court has jurisdiction under 28 U.S.C. §§ 1332(a)(1) and 1332(c)(1), in that Plaintiff and Defendant are citizens of different States and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

10. Venue is proper under 28 U.S.C. § 1391(a)(2) since the property that is the subject of this action is situated in this judicial district.

### **FACTUAL ALLEGATIONS**

11. By Agreement of Lease dated May 1, 1999 (the "Lease") between Plaintiff, as landlord, and Three S's, as tenant, Three S's leased the Premises from Plaintiff.

12. As a material inducement to Plaintiff to enter into the Lease, and for other good and valuable consideration, by Guaranty dated as of May 1, 1999 (the "Guaranty"), Defendant guaranteed the payment of any and all Base Rent, Added Rent (as such terms are defined in the Lease) and all other sums due under the Lease.

13. As a result of Three S's default in the payment of rent, Plaintiff served a notice (the "Notice to Cure") upon Three S's, requiring Three S's to cure its default on or before December 17, 2007 (the "Cure Date").

14. As a result of Three S's failure to cure the defaults alleged in the Notice to Cure on or before the Cure Date, Plaintiff served upon Three S's a Notice of Termination advising



Three S's of Plaintiff's intention to terminate the Lease as of December 28, 2007 (the "Termination Date").

15. By reason of Three S's failure to vacate the Premises on or before the Termination Date, Plaintiff commenced a summary holdover proceeding in the Civil Court of the City of New York, County of Bronx, bearing Index No. L&T 900282/08 and said proceeding remains *sub judice*.

16. Three S's is in default of the Lease for failing to pay Base Rent, Added Rent and other sums due under the Lease during the period from October 1, 2007 through March 7, 2008 in the amount of \$127,867.83 (the "Arrears") despite due demand therefor.

17. Pursuant to the terms of the Guaranty, Defendant is liable to Plaintiff for the payment of all Base Rent, Added Rent and all other sums due to Plaintiff under the Lease including, without limitation, damages as provided at Lease Article 22 and, at Plaintiff's election, a sum equal to two times the Base Rent and additional rent payable during the last month of the term of the Lease as provided in Lease Section 18.04.

18. Pursuant to the Lease and the Guaranty, Plaintiff is entitled to recover from Defendant all of the attorneys' fees, costs and disbursements incurred by Plaintiff in prosecuting Three S's defaults under the Lease and enforcing its rights under the Guaranty

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

19. Plaintiff repeats and realleges paragraphs 1 through 18 above as if fully set forth herein.

20. Defendant is in default of his obligations under the Guaranty for failing and refusing to pay the Arrears to Plaintiff.

21. As a result of the defaults by Defendant and Three S's, Defendant has incurred damages, the amount of which continues to accrue.

22. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendant in the amount of at least \$127,867.83, together with such additional amounts as may accrue through and including the date of trial.

### **SECOND CAUSE OF ACTION**

23. Plaintiff repeats and realleges paragraphs 1 through 22 above as if fully set forth herein.

24. Defendant was heretofore notified of the amounts due and owing in connection with the Lease and Guaranty.

25. Plaintiff's communications and correspondence with Defendant constitute an account stated.

26. At no time heretofore has Defendant disputed owing the amounts so stated.

27. Based upon Defendant's failure to dispute the amounts demanded of it, it has accepted and agreed that such amounts are correct and that an account has been stated.

28. Defendant has waived its right to challenge the amounts for which an account was stated and has ratified that such amounts are due and owing.

29. By virtue of the foregoing, Plaintiff is entitled to recover of Defendant an amount to be determined by the Court but in no event less than \$127,867.83.

### **THIRD CAUSE OF ACTION**

30. Plaintiff repeats and realleges paragraphs 1 through 29 above as if fully set forth herein.

31. Pursuant to Section 21.04 and other applicable provisions of the Lease, Three S's is liable for all of Plaintiff's costs, expenses and disbursements, including but not limited to reasonable attorneys' fees, incurred in collecting or endeavoring to collect the rents due under the Lease or enforcing any rights against Three S's under the Lease, and all of said amounts are due as additional rent under the Lease.

32. Pursuant to Paragraph A and other applicable provisions of the Guaranty, Defendant guaranteed to Plaintiff the full and prompt performance of all of Three S's obligations under the Lease, including but not limited to the payment of attorneys' fees incurred.

33. Pursuant to Paragraph J and other applicable provisions of the Guaranty, Defendant is liable for all of Plaintiff's costs, expenses and disbursements, including but not limited to reasonable attorneys' fees, incurred as a result of Defendant's default under the Guaranty and in enforcing Plaintiff's rights herein.

34. Plaintiff has incurred and will continue to incur attorneys' fees, costs and expenses as a result of Three S's defaults and in enforcing its rights under the terms of the Lease and Guaranty.

35. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendant in an amount of at least \$15,000.00, the precise amount to be determined by the Court.

#### **RELIEF SOUGHT**

**WHEREFORE**, Plaintiff respectfully demands judgment against Defendant as follows:

- (a) on the first cause of action, awarding Plaintiff a money judgment against Defendant in the amount of \$127,867.83 together with such additional amounts that accrue through and including the date of trial;

- (b) on the second cause of action, awarding Plaintiff a money judgment against Defendant in the amount of \$127,867.83 together with such additional amounts that accrue through and including the date of trial;
- (c) on the third cause of action, awarding Plaintiff a money judgment against Defendant in an amount to be determined by the Court for Plaintiff's attorneys' fees, costs and disbursements incurred in enforcing its rights under the Lease and Guaranty;
- (d) awarding Plaintiff interest and costs; and
- (e) granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York  
March 12, 2008

**GREENBERG TRAURIG, LLP**

*Attorneys for Plaintiff*

200 Park Avenue

New York, New York 10166

(212) 801-9200

By: 

Heath B. Kushnick (HK1101)

*KushnickH@GTLaw.com*

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SIDLEY HOLDING CORP.,

Plaintiff,

v.

MORTON RUDERMAN,

Defendant.

CASE NO. 08-CV-2513 (WHP)

**ANSWER**

MORTON RUDERMAN, by his attorneys, Mitchell Silberberg & Knupp LLP, hereby responds to the Complaint of Sidley Holding Corp. as follows:

1. With respect to paragraph 1 of the Complaint, denies knowledge or information sufficient to form a belief as to truth of the allegations relating to the nature of the action alleged to be brought against Morton Ruderman, and denies the remaining allegations contained therein.
2. Denies knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraphs 2, 5, 9 and 10 of the Complaint.
3. Admits the allegations contained in paragraph 3 of the Complaint.
4. Denies each and every allegation contained in paragraphs 4, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35 of the Complaint.
5. With respect to paragraph 11 of the Complaint, admits only that there was a document designated "Agreement of Lease" dated May 1, 1999 and refers the Court to the terms and conditions set forth therein for the rights and obligations of

the parties thereto, and denies the remaining allegations contained in paragraph 11 of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

6. The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

7. The Plaintiff has prevented the Defendant from mitigating its damages and any liability he might have pursuant to the Guaranty insofar as the Plaintiff has failed and refused to allow the Defendant to provide a tenant who is ready, willing and able to occupy the space in the place and stead of the current sub-tenant.

**THIRD AFFIRMATIVE DEFENSE**

8. The Plaintiff has waived its right to pursue the Defendant on the Guaranty based on the doctrine of equitable estoppel.

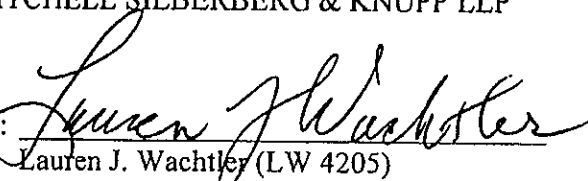
**FOURTH AFFIRMATIVE DEFENSE**

9. Plaintiff's claims are barred by the doctrine of laches.

DATED: New York, New York  
April 7, 2008

MITCHELL SILBERBERG & KNUPP LLP

By:

  
Lauren J. Wachtler (LW 4205)  
12 East 49th Street, 30th Floor  
New York, New York 10017-1028  
Telephone: (212) 509-3900  
Facsimile: (212) 509-7239  
E-mail: ljw@msk.com

Attorneys for Defendant  
MORTON RUDERMAN

TO: Heath B. Kushnick, Esq.  
Greenberg Traurig, LLP  
*Attorneys for Plaintiff*  
200 Park Avenue  
New York, NY 10166  
(212) 801-9200



AO 458 (Rev. 10/95) Appearance

# UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

NEW YORK

SIDLEY HOLDING CORP.,

Plaintiff,

v.

MORTON RUDERMAN,

Defendant.

## APPEARANCE

Case Number: 08-CV-2513

To the Clerk of this court and all parties of record:

Enter my appearance as counsel in this case for  
DEFENDANT, MORTON RUDERMAN

I certify that I am admitted to practice in this court.

4/8/2008

Date

  
Signature

LAUREN J. WACHTLER

LW4205

Print Name

Bar Number

MITCHELL SILBERBERG & KNUPP LLP, 12 E. 49TH ST

Address

NEW YORK

NY

10017

City

State

Zip Code

(212) 509-3900

(212) 509-7239

Phone Number

Fax Number

## **EXHIBIT F**

Guaranty

A. The undersigned individual, residing at 31 Wildwood Drive, Lynnfield, Massachusetts 01940, in consideration of the execution and delivery by SIDLEY HOLDING CORP., a corporation organized under the laws of the State of New York, as landlord ("Landlord"), of the lease of even date herewith of space at 110-112 East Fordham Road, Bronx, New York ("Lease") to THREE S's AND AN R, LLC, as tenant ("Tenant") and in order to induce Landlord to execute and deliver the Lease to Tenant, and in further consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration, to it in hand paid by Landlord, the receipt whereof is hereby acknowledged, DOES HEREBY ABSOLUTELY GUARANTEE to the Landlord, its successors and assigns, the full and prompt performance by Tenant of all of the obligations of Tenant under the Lease, as the same may be extended, including, without limitation, the payment by Tenant of all Base Rent and additional rent reserved under, and as defined in, the Lease, and any arrears thereof, and any other sum or sums required to be paid by Tenant under any of the terms of the Lease, that may be or become due or payable to Landlord, its successors and assigns, and the payment by Tenant of any and all damages that may arise in consequence of the non-performance by Tenant of any of the covenants or agreements required to be performed by Tenant pursuant to the Lease, only to the extent provided in Paragraph M below.

B. The undersigned waive all requirements of notice of the acceptance of this Guaranty. This Guaranty shall be a continuing guaranty.

C. This Guaranty shall not be discharged, impaired, or in any way affected, nor shall the undersigned be released from liability hereunder because, or on account of, any waiver, modification, alteration, amendment, or extension, at any time and from time to time, of any of the terms or provisions of the Lease (including, without limitation, the Term), or by reason of any other act or thing which but for this provision of this Guaranty might be deemed a legal or equitable discharge of a surety, or by reason of the failure of Landlord, its successors or assigns, to proceed promptly or otherwise; and the undersigned hereby expressly waives and surrenders any defense to its liability hereunder based upon any of the foregoing waivers, modifications, alterations, amendments, extensions, or delays, or any of them.

D. It is specifically agreed that Landlord, its successors and assigns, may proceed under this Guaranty without being required to give to the undersigned notice of any default on the part of Tenant under the Lease and without being required to institute any proceedings against Tenant.

E. The obligations herein of the undersigned are independent of the obligations of Tenant. The undersigned waive any right to require Landlord to pursue any other remedy in Landlord's power whatsoever.

F. For the purpose of this Guaranty and the obligations and liabilities of the undersigned herein, the term "Tenant" shall be deemed to include any and all licensees, assignees, subtenants, permittees or others directly or indirectly operating or conducting business in or from the Demised Premises, as fully as if any of the same were the named Tenant under the Lease.

G. The undersigneds' obligations herein shall remain fully binding although Landlord may have released, returned or misapplied other collateral at any time given as security for Tenant's obligations (including other guaranties) and/or released Tenant from the performance of its obligations under the Lease.

H. This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the disaffirmance of the Lease in any such proceedings or otherwise.

I. Landlord may, without notice, assign this Guaranty in whole or in part.

J. In the event that Landlord should institute any suit against the undersigned for violation of or to enforce any of the covenants or conditions of this Guaranty or to enforce any right of Landlord hereunder, the undersigned shall reimburse Landlord for its attorneys' fees, disbursements and court costs incurred by Landlord thereby.

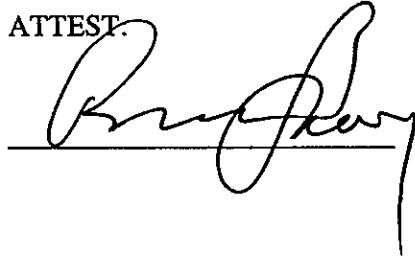
K. The execution of this Guaranty prior to execution of the Lease shall not invalidate this Guaranty or lessen the obligations of the guarantor hereunder.

L. Insofar only as the undersigned individually is concerned, his liability under this Guaranty shall terminate (except as hereafter provided) upon the occurrence of all of the following: (a) the expiration of 180 days following Tenant's notice to Landlord of the date on which Tenant shall vacate and surrender the Demised Premises, (b) the surrender and vacation of the Demised Premises by Tenant in accordance with the terms of the Lease, including, but not limited to, free and clear of all liens, free and clear of all property in which any others have any rights and free and clear of occupancy and use (or any rights or claims of rights thereto) by any occupant, subtenant, licensee or others (excluding Landlord or anyone occupying the Demised Premises through Landlord after Tenant's surrender and vacation of the Demised Premises), (c) the delivery to Landlord of all keys, magnetic access cards, alarm access codes and similar items to fully enjoy occupancy to the Demised Premises, (d) a notice, by Tenant to Landlord, of such surrender and vacation specifying all of the foregoing, specifying the date of such surrender and vacation, and specifying that this Lease has been terminated as of a past date specified in such notice, and (e) the full payment of all Base Rent and additional rent up to the date all of the foregoing have been completed. Notwithstanding any limitations to the contrary in this Paragraph, the undersigned understands and agrees that he will be personally liable for all costs and expenses incurred by Landlord as provided in Paragraph J. Notwithstanding such vacancy and surrender, Tenant shall continue to be liable under the terms of the Lease for breach thereof, and no acceptance by Landlord of any surrender or vacancy under this Guaranty shall be deemed to modify, release, satisfy or otherwise relieve Tenant of any liability whatsoever under the Lease. The undersigned understands and agrees that in the event of Tenant's early termination of this Lease the Security Deposit held by Landlord pursuant to the terms of this Lease shall not be applied to Base Rent or additional rent due, or any other liability to Landlord through the date Tenant vacates the Demised Premises, and will not reduce the undersigned's liability, if any, as provided for in this Guaranty.

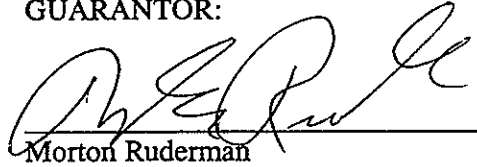
This Guaranty shall inure to the benefit of Landlord, its successors and assigns, and shall bind the undersigned and its successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal as of the 1<sup>st</sup> day of May, 1999.

ATTEST:

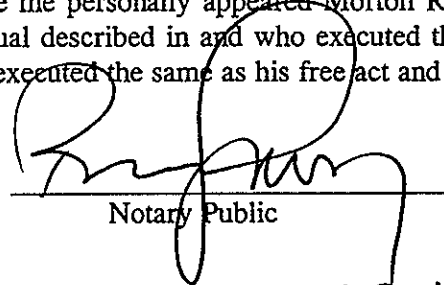


GUARANTOR:

  
Morton Ruderman

STATE OF MA )  
 )ss.:  
COUNTY OF Essex )

On this 28 day of May, 1999, before me personally appeared Morton Ruderman, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same as his free act and deed.

  
Notary Public

Bruce A. Gorsky  
NOTARY PUBLIC  
My commission expires Aug. 13, 2004

# **EXHIBIT J**

**NOTICE TO CURE**

December 4, 2007

To: **THREE S'S AND AN R, LLC**  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

Re: Agreement of Lease made as of May 1, 1999 (the "Lease"), between Sidley Holding Corp. ("Landlord"), as landlord, and Three S's and an R, LLC ("Tenant"), as tenant, incorporating that certain Agreement of Lease made as of August 10, 1998 (as amended, the "1998 Lease"), between Landlord and a former tenant, for portions of the ground floor (sometimes referred to as basement or cellar), first floor, and mezzanine level (collectively the "Premises") in the building known as and located at 110-112 East Fordham Road, Bronx, New York 10468.

---

TAKE NOTICE that Tenant has failed to comply with its obligations under Sections III and IV of the 1999 Lease, Articles 1, 3, 4, 13, 21 and other applicable provisions of the 1998 Lease, which require Tenant, among other things, to timely pay Base Rent, Added Rent and additional rent (collectively, "Rent") to Landlord as and when the same became due under the Lease, in that Tenant failed to pay the Rent due under the Lease during the period from October 1, 2007 through December 4, 2007 in the amount of \$64,251.29 (as set forth on the statement annexed hereto, incorporated herein by reference and made a part hereof, the "Arrears").

TAKE FURTHER NOTICE that, in accordance with Section 20.02 of the 1998 Lease and other applicable provisions of the Lease, Tenant is required to deliver payment of the full amount of the Arrears to Landlord on or before December 17, 2007 (the "Cure Date"), which date is not less than ten (10) days from the date this notice is given.

TAKE FURTHER NOTICE that in the event Tenant fails to deliver payment of the full amount of the Arrears to Landlord on or before the Cure Date, Landlord will exercise its rights

under Section 20.02 of the 1998 Lease and other applicable provisions of the Lease and pursuant to law, and serve a three day notice of cancellation of the Lease (the "Termination Notice") upon Tenant, in which event, upon the expiration of the period of time set forth in the Termination Notice (the "Termination Date"), the term of the Lease will terminate and expire as if the Termination Date was the day fixed in the Lease for the end and expiration thereof, Tenant will remain liable for damages pursuant to applicable provisions of the Lease (including but not limited to past due and future Rent, damages, and Landlord's attorneys' fees, costs and expenses), and Landlord may commence an appropriate action or proceeding to remove Tenant from the Premises and/or commence such other actions and proceedings as Landlord deems appropriate.

**TAKE FURTHER NOTICE** that this notice is without prejudice to and shall not constitute a waiver, release or relinquishment of any of Landlord's claims, defenses, rights or remedies under the Lease, applicable law or otherwise, all of which are expressly reserved.

All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

**SIDLEY HOLDING CORP. Landlord**

By: 

Name: Richard Levine

Authorized Signatory Per Annexed Authorization



cc: **THREE S'S AND AN R, LLC**  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MORTON RUDERMAN**  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MMR Investments, LLC**  
40 Salem Street, Suite One  
Lynnfield, MA 01940

**Sidley Holding Corp.****Three S's & an R  
Arrears Statement**

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGE</u>
October 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	\$755.28
	Past Due (late payment)	\$723.03
	Past Due (legal fees)	<u>\$5,633.33</u>
	October Total:	\$25,457.93
November 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	<u>\$763.74</u>
	November Total:	\$19,110.03
December 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	<u>\$1,337.04</u>
	December Total:	\$19,683.33
	Total:	\$64,251.29

**AUTHORIZATION**

SIDLEY HOLDING CORP. ("Sidley"), a Delaware limited liability company, hereby appoints and authorizes Mr. Richard Levine to individually act as its authorized signatory and agent and to execute on behalf of, and in the name of, Sidley: (a) any and all demands and notices permitted under leases, licenses, service contracts, occupancy agreements or applicable law including but not limited to notices to cure, notices of termination, non-payment and holdover notices, and notices terminating monthly tenancies, tenancies-at-will or tenancies-at-sufferance; and (b) pleadings and affidavits relating to tenants, licensees, leases, licenses, occupancy agreements, stipulations, service contracts, collection of arrears and/or other monies due to Sidley. This authorization is valid for a period of one year from the date of execution unless sooner terminated in writing.

SIDLEY HOLDING CORP.

By:

*Sidney Clyman*  
Name: Dr. Sidney Clyman  
Title: President

STATE OF NEW YORK                    )  
  } s.s.:  
COUNTY OF WESTCHESTER        )

On the 27 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Dr. Sidney Clyman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on this instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

*Virginia Brees*  
Notary Public  
VIRGINIA S. BREESE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WESTCHESTER COUNTY  
NO. 01886138143  
MY COMMISSION EXPIRES 12/31/2011  
*Virginia Brees*

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
  :ss.  
COUNTY OF NEW YORK    )

Salvatore Giambrone, being duly sworn, deposes and says:

1. I am employed by Greenberg Traurig, LLP, attorneys for Sidley Holding Corp.  
2. I am not a party to this action, am over 18 years of age and reside in Queens, New York.

3. On the 4<sup>th</sup> day of December, 2007, I served the annexed Notice to Cure by depositing true copies in securely sealed envelopes, into the exclusive care and custody of Federal Express for overnight delivery, addressed as follows::

THREE S'S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

THREE S'S AND AN R, LLC  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

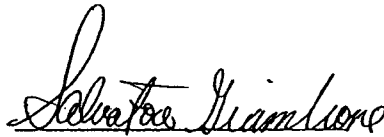
MORTON RUDERMAN  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

MMR Investments, LLC  
40 Salem Street, Suite One  
Lynnfield, Massachusetts 01940

Sworn to before me this  
6<sup>th</sup> day of December, 2007

  
\_\_\_\_\_  
NOTARY PUBLIC

HEATH B. KUSHNICK  
Notary Public, State of New York  
No. 02KU6016400  
Qualified in New York County  
Commission Expires 11/16/10

  
\_\_\_\_\_  
Salvatore Giambrone  
License No. 1133136

## **EXHIBIT K**

**NOTICE OF TERMINATION**

December 20, 2007

To: **THREE S'S AND AN R, LLC**  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine levels  
Bronx, New York 10468

Re: Agreement of Lease made as of May 1, 1999 (the "Lease"), between Sidley Holding Corp. ("Landlord"), as landlord, and Three S's and an R, LLC ("Tenant"), as tenant, incorporating that certain Agreement of Lease made as of August 10, 1998 (as amended, the "1998 Lease"), between Landlord and a former tenant, for portions of the ground floor (sometimes referred to as basement or cellar), first floor and mezzanine level (collectively the "Premises") in the building known as and located at 110-112 East Fordham Road, Bronx, New York 10468.

TAKE NOTICE that Tenant defaulted in observing and performing its obligations under Sections III and IV of the Lease, Articles 1, 3, 4, 13, 21 and other applicable provisions of the 1998 Lease, which require Tenant, among other things, to timely pay Base Rent, Added Rent and additional rent (collectively, "Rent") as and when the same becomes due under the Lease, and Tenant failed to cure its default as described in the notice to cure dated December 4, 2007 (a copy of which is annexed hereto as Exhibit A, incorporated herein by reference and made a part hereof, the "Notice to Cure") in that Tenant failed to pay Rent in the amount of \$64,251.29 by December 17, 2007 (the "Cure Date"), which was at least ten (10) days after service of the Notice to Cure upon Tenant.

TAKE FURTHER NOTICE that pursuant to Section 20.02 of the 1998 Lease (made applicable by Section 2.02 and other applicable provisions of the Lease), Landlord hereby elects to terminate the Lease on December 28, 2007 (the "Termination Date"), which date is not less than three (3) days from the date this notice is given, and the Lease, the term thereof and any and

all right, title and interest of Tenant thereunder shall end and expire on the Termination Date as fully and completely as if the Termination Date was the day fixed in the Lease for the end and expiration of the term thereof.

TAKE FURTHER NOTICE that Tenant is required to quit and vacate the Premises in accordance with the terms of the Lease on or before the Termination Date and if Tenant fails to so quit and vacate on or before the Termination Date, Landlord will, among other things, commence an appropriate action and/or proceeding to remove Tenant from the Premises and to recover all past due Rent, the reasonable value of Tenants' use and occupancy of the Premises, attorneys' fees and any other damages incurred by Landlord in accordance with applicable provisions of the Lease and applicable law.

TAKE FURTHER NOTICE that this notice is without prejudice to, and shall not constitute a waiver, release or relinquishment of any of Landlord's claims, defenses, rights or remedies, all of which are expressly reserved.

All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

SIDLEY HOLDING CORP., Landlord

By: 

Name: Richard Levine

Authorized Signatory Per Annexed Authorization



cc: **THREE S'S AND AN R, LLC**  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MORTON RUDERMAN**  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**VIMR Investments, LLC**  
40 Salem Street, Suite One  
Lynnfield, MA 01940

AUTHORIZATION

SIDLEY HOLDING CORP. ("Sidley"), a Delaware limited liability company, hereby appoints and authorizes Mr. Richard Levine to individually act as its authorized signatory and agent and to execute on behalf of, and in the name of, Sidley: (a) any and all demands and notices permitted under leases, licenses, service contracts, occupancy agreements or applicable law including but not limited to notices to cure, notices of termination, non-payment and holdover notices, and notices terminating monthly tenancies, tenancies-at-will or tenancies-at-sufferance; and (b) pleadings and affidavits relating to tenants, licensees, leases, licenses, occupancy agreements, stipulations, service contracts, collection of arrears and/or other monies due to Sidley. This authorization is valid for a period of one year from the date of execution unless sooner terminated in writing.

SIDLEY HOLDING CORP.

By:

Sidney Clyman  
Name: Dr. Sidney Clyman  
Title: President

STATE OF NEW YORK                    )  
  ) s.s.:  
COUNTY OF WESTCHESTER        )

On the 27 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Dr. Sidney Clyman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on this instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Virginia S. Brees  
Notary Public  
VIRGINIA S. BREESE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WESTCHESTER COUNTY  
NO. 0186139142  
COMMISSION EXPIRES 12/31/2010  
Virginia S. Brees

**-EXHIBIT A-**

**NOTICE TO CURE**

December 4, 2007

To: **THREE S'S AND AN R, LLC**  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

Re: Agreement of Lease made as of May 1, 1999 (the "Lease"), between Sidley Holding Corp. ("Landlord"), as landlord, and Three S's and an R, LLC ("Tenant"), as tenant, incorporating that certain Agreement of Lease made as of August 10, 1998 (as amended, the "1998 Lease"), between Landlord and a former tenant, for portions of the ground floor (sometimes referred to as basement or cellar), first floor, and mezzanine level (collectively the "Premises") in the building known as and located at 110-112 East Fordham Road, Bronx, New York 10468.

TAKE NOTICE that Tenant has failed to comply with its obligations under Sections III and IV of the 1999 Lease, Articles 1, 3, 4, 13, 21 and other applicable provisions of the 1998 Lease, which require Tenant, among other things, to timely pay Base Rent, Added Rent and additional rent (collectively, "Rent") to Landlord as and when the same became due under the Lease, in that Tenant failed to pay the Rent due under the Lease during the period from October 1, 2007 through December 4, 2007 in the amount of \$64,251.29 (as set forth on the statement annexed hereto, incorporated herein by reference and made a part hereof, the "Arrears").

TAKE FURTHER NOTICE that, in accordance with Section 20.02 of the 1998 Lease and other applicable provisions of the Lease, Tenant is required to deliver payment of the full amount of the Arrears to Landlord on or before December 17, 2007 (the "Cure Date"), which date is not less than ten (10) days from the date this notice is given.

TAKE FURTHER NOTICE that in the event Tenant fails to deliver payment of the full amount of the Arrears to Landlord on or before the Cure Date, Landlord will exercise its rights

under Section 20.02 of the 1998 Lease and other applicable provisions of the Lease and pursuant to law and serve a three day notice of cancellation of the Lease (the "Termination Notice") upon Tenant, in which event, upon the expiration of the period of time set forth in the Termination Notice (the "Termination Date"), the term of the Lease will terminate and expire as if the Termination Date was the day fixed in the Lease for the end and expiration thereof, Tenant will remain liable for damages pursuant to applicable provisions of the Lease (including but not limited to past due and future Rent, damages, and Landlord's attorneys' fees, costs and expenses), and Landlord may commence an appropriate action or proceeding to remove Tenant from the Premises and/or commence such other actions and proceedings as Landlord deems appropriate.

**TAKE FURTHER NOTICE** that this notice is without prejudice to and shall not constitute a waiver, release or relinquishment of any of Landlord's claims, defenses, rights or remedies under the Lease, applicable law or otherwise, all of which are expressly reserved.

All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

**SIDLEY HOLDING CORP. Landlord**

By: 

Name: Richard Levine

Authorized Signatory Per Annexed Authorization

cc: **THREE S'S AND AN R, LLC**  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MORTON RUDERMAN**  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MMR Investments, LLC**  
40 Salem Street, Suite One  
Lynnfield, MA 01940

**Sidley Holding Corp.****Three S's & an R  
Arrears Statement**

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGE</u>
October 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	\$755.28
	Past Due (late payment)	\$723.03
	Past Due (legal fees)	<u>\$5,633.33</u>
	October Total:	\$25,457.93
November 1, 2007	Base Rent	\$12,432.94
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	Late Payment	<u>\$763.74</u>
	November Total:	\$19,110.03
December 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	<u>\$1,337.04</u>
	December Total:	\$19,683.33
	Total:	\$64,251.29

AUTHORIZATION

SIDLEY HOLDING CORP. ("Sidley"), a Delaware limited liability company, hereby appoints and authorizes Mr. Richard Levine to individually act as its authorized signatory and agent and to execute on behalf of, and in the name of, Sidley: (a) any and all demands and notices permitted under leases, licenses, service contracts, occupancy agreements or applicable law including but not limited to notices to cure, notices of termination, non-payment and holdover notices, and notices terminating monthly tenancies, tenancies-at-will or tenancies-at-sufferance; and (b) pleadings and affidavits relating to tenants, licensees, leases, licenses, occupancy agreements, stipulations, service contracts, collection of arrears and/or other monies due to Sidley. This authorization is valid for a period of one year from the date of execution unless sooner terminated in writing.

SIDLEY HOLDING CORP.

By:

*Sidney Clyman*  
Name: Dr. Sidney Clyman  
Title: President

STATE OF NEW YORK                    )  
  )s.s.:  
COUNTY OF WESTCHESTER        )

On the 27 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Dr. Sidney Clyman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on this instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

*Virginia E. Brees*  
Notary Public  
VIRGINIA E. BREESE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WESTCHESTER COUNTY  
NO. 018R6136143  
MY COMMISSION EXPIRES 12/31/2011  
*Virginia E. Brees*



AFFIDAVIT OF SERVICE

STATE OF NEW YORK     )  
                                      :ss.  
COUNTY OF NEW YORK    )

Salvatore Giambrone, being duly sworn, deposes and says:

1. I am employed by Greenberg Traurig, LLP, attorneys for Sidley Holding Corp.
2. I am not a party to this action, am over 18 years of age and reside in Queens, New York.
3. On the 4<sup>th</sup> day of December, 2007, I served the annexed Notice to Cure by depositing true copies in securely sealed envelopes, into the exclusive care and custody of Federal Express for overnight delivery, addressed as follows::

THREE S'S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

THREE S'S AND AN R, LLC  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

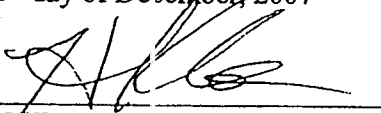
THREE S'S AND AN R, LLC  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

MORTON RUDERMAN  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

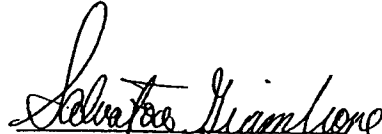
MMR Investments, LLC  
40 Salem Street, Suite One  
Lynnfield, Massachusetts 01940

Sworn to before me this  
6<sup>th</sup> day of December, 2007



NOTARY PUBLIC

HEATH B. KUSHNICK  
Notary Public, State of New York  
No. 02KIJ6016400  
Qualified in New York County  
Commission Expires 11/16/10



Salvatore Giambrone  
License No. 1133136

# **EXHIBIT L**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: NON-HOUSING PART 52

----- X  
SIDLEY HOLDING CORP.,

Petitioner,

NOTICE OF PETITION

– against –

Commercial Holdover  
**0900282**

THREE S' S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and  
mezzanine levels  
Bronx, New York 10112,

Index No. L&T /08

Respondents,

– and –

GODA RESTAURANTS CORP. a/k/a GODA  
RESTAURANT CORP. d/b/a PIZZA HUT,  
STATEWIDE MANAGEMENT AT FORDHAM  
ROAD, INC. d/b/a PIZZA HUT, LAUGHING PARTY  
CO., LLC, "ABC CO."\* and "XYZ CORP."\*,

Respondent(s).

\* The first name and/or last name of said respondent(s)  
being fictitious and unknown to petitioner, the entity(ies)  
and/or individuals(s) intended being in possession of the  
premises herein described without petitioner's knowledge  
or consent.

----- X

To the respondents above-named and described, in possession of the premises hereinafter  
described or claiming possession thereof:

TAKE NOTICE that a hearing at which you must appear will be held before the Civil  
Court of the City of New York, County of Bronx, at Part 52 thereof, located in Courtroom 129,  
of the courthouse located at 851 Grand Concourse, Bronx, New York, on February 19, 2008, at  
2:00 p.m., on the annexed Petition of Sidley Holding Corp., verified on February 12, 2008,  
which prays for: (i) a final judgment of possession awarding petitioner possession of commercial  
premises comprised of portions of the ground floor, first floor and mezzanine levels of the  
building known as and located at 110-112 East Fordham Road, Bronx, New York (as more fully  
described in the accompanying Petition, the "Premises"); (ii) a money judgment in an amount to  
be determined by the Court for rent in arrears totaling \$64,251.29 together with use and  
occupancy due to petitioner for each month or part thereof from December 29, 2007 through and

including such date as petitioner recovers actual possession of the premises; and (iii) such other and further relief as the Court deems necessary and proper, including interest, and the attorneys' fees, costs and expenses incurred by petitioner in prosecuting this proceeding.

**TAKE FURTHER NOTICE** that you are required to answer the Petition, and your answer may set forth any defense or counterclaim you may have against petitioner, unless such defense or counterclaim is precluded by law or by prior agreement of the parties.


**TAKE FURTHER NOTICE** that if you fail to interpose and establish any defense or counterclaim you may have against petitioner, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

**TAKE FURTHER NOTICE** that your answer may be made at the time of the hearing specified above, unless this Notice of Petition and Petition is served upon you at least eight (8) days prior to the time the Petition is noticed to be heard, in which event you must answer at least three (3) days before such date, either orally before the Clerk of the Court at his or her office, or in writing by serving a copy thereof upon the undersigned attorneys for petitioner and by filing the original of such written answer, with proof of service thereof, in the Office of the Clerk of the Court at least three (3) days before the date the Petition is noticed to be heard. In addition, you must appear before the Court at the time and place hereinabove set forth for the hearing.

**TAKE FURTHER NOTICE** that your failure to appear and answer may result in a final judgment against you and in favor of petitioner, by default, for the relief demanded in the Petition.

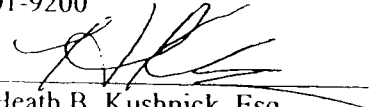
**TAKE FURTHER NOTICE** that, pursuant to Section 745 of the New York State Real Property Actions and Proceedings Law, you may be required by the Court to make a deposit of use and occupancy, or a payment of use and occupancy to petitioner, upon your second request for an adjournment or if the proceeding is not settled or a final determination has not been made by the Court within thirty (30) days of the first court appearance. Failure to comply with an initial deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on the issues raised in your answer.

Dated: New York, New York  
February 12, 2008

JACK BAER  **FEB 12 2008**  
CHIEF CLERK OF THE CIVIL COURT  
OF THE CITY OF NEW YORK

**GREENBERG TRAURIG, LLP**  
*Attorneys for Petitioner*  
200 Park Avenue  
New York, New York 10166  
(212) 801-9200

By:

  
Heath B. Kushnick, Esq.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: NON-HOUSING PART 52

----- X  
SIDLEY HOLDING CORP.,

Petitioner,

VERIFIED PETITION

– against –

Commercial Holdover

THREE S' S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and  
mezzanine levels  
Bronx, New York 10112,

Index No. L&T /08

Respondents,

– and –

GODA RESTAURANTS CORP. a/k/a GODA  
RESTAURANT CORP. d/b/a PIZZA HUT,  
STATEWIDE MANAGEMENT AT FORDHAM  
ROAD, INC. d/b/a PIZZA HUT, LAUGHING PARTY  
CO., LLC, "ABC CO."\* and "XYZ CORP."\*,

Respondent(s).

\* The first name and/or last name of said respondent(s)  
being fictitious and unknown to petitioner, the entity(ies)  
and/or individuals(s) intended being in possession of the  
premises herein described without petitioner's knowledge  
or consent.

----- X

Petitioner Sidley Holding Corp. ("Petitioner"), by its attorneys, Greenberg Traurig, LLP,  
as and for its Petition herein, alleges that:

1. Petitioner is a domestic business corporation.
2. Petitioner is the owner and landlord of the building located at 110-112 East Fordham Road, Bronx, New York 10112 (the "**Building**"), and is authorized to maintain this proceeding.

3. The subject premises (the “**Premises**”) are described as follows: portions of the Building’s ground floor (sometimes referred to as basement or cellar), first floor and mezzanine levels (as shown approximated on the diagrams annexed hereto as Exhibit A, incorporated herein by reference and made a part hereof), and currently operating as a Pizza Hut store.

4. The Premises are situated within the territorial jurisdiction of the Civil Court of the City of New York, County of Bronx.

5. The Premises are not part of a multiple dwelling.

6. The Premises are not subject to rent control or rent stabilization, by virtue of the fact that the Premises were leased and used for strictly commercial purposes.

7. Upon information and belief, respondent Three S’s And An R, LLC (“**Three S’s**”) is a domestic limited liability company in possession of and doing business from the Premises.

8. Upon information and belief, respondent Goda Restaurants Corp. a/k/a Goda Restaurants Corp. d/b/a Pizza Hut is a domestic business corporation possibly in possession of all or some portion of the Premises without Petitioner’s knowledge or consent.

9. Upon information and belief, respondent Statewide Management at Fordham Road, Inc. d/b/a Pizza Hut (“**Statewide Management**”) is a domestic corporation possibly in possession of all or some portion of the Premises as a subtenant of Three S’s.

10. Upon information and belief, respondent Statewide Management was dissolved by proclamation of the Secretary of State published on September 25, 2002 pursuant to the Tax Law.

11. Upon information and belief, respondent Laughing Party Co., LLC (“**Laughing Party**”) is a domestic limited liability company possibly in possession of all or some portion of the Premises as a subtenant of Three S’s.

12. Upon information and belief, respondent(s) "ABC Co." and "XYZ Corp." are unknown entity(ies) and/or individual(s) possibly in possession of all or some portion of the Premises without Petitioner's knowledge or consent.

13. By Agreement of Lease made as of May 1, 1999 (the "Lease") (which Lease incorporates that certain Agreement of Lease made as of August 10, 1998 [as amended, the "1998 Lease"], between Landlord and a former tenant) between Petitioner, as landlord, and Three S's, as tenant, Three S's leased the Premises from Petitioner.

14. Upon information and belief, pursuant to a sublease made on or about May 1, 1999, by and among Three S's, as sublandlord, and Statewide Management and Laughing Party, as sublessees, Three S's subleased all or some portion of the Premises to Statewide Management and Laughing Party.

15. Three S's violated and continues to violate substantial obligations of its tenancy and Lease in that, in violation of Sections III and IV of the Lease, and Articles 1, 3, 4, 13, 21 and other provisions of the 1998 Lease, Three S's failed to pay base rent and added rent (collectively "Rent") when due.

16. As a result of Three S's default, Petitioner served a notice (the "Notice to Cure") upon Three S's, requiring Three S's to cure its defaults on or before December 17, 2007 (the "Cure Date"), which was not less than ten days from the date of service of the Notice to Cure. A true copy of the Notice to Cure and proof of its delivery are annexed hereto as Exhibit B, incorporated herein by reference and made a part hereof.

17. Three S's failed to cure the defaults alleged in the Notice to Cure on or before the Cure Date.



18. Pursuant to Section 20.02 of the 1998 Lease (made applicable by Section 2.02 and other applicable provisions of the Lease), Petitioner served upon Three S's a notice (the "**Notice of Termination**") advising Three S's of Petitioner's intention to terminate the Lease as of December 28, 2007 (the "**Termination Date**") which was not less than three days from the date of service of the Notice to Termination. A true copy of the Notice of Termination and proof of its delivery are annexed hereto as Exhibit C, incorporated herein by reference and made a part hereof.

19. The term for which the Premises were rented terminated on the Termination Date and respondents continue to occupy the Premises without the permission of Petitioner.

20. By reason of Three S's failure to vacate the Premises upon the termination of its tenancy, Petitioner has been required to commence summary proceedings and will incur legal expenses and attorneys' fees in an amount to be determined by the Court but in no event less than \$5 000.00, which Three S's is required to pay pursuant to the terms of the Lease.

21. Three S's defaulted in the payment of Rent prior to the termination of its tenancy and, therefore, Petitioner is entitled to a judgment in the amount of \$64,251.29, plus such additional amounts as may have accrued prior to the termination of the Lease term.

22. Petitioner is also entitled to a judgment in an amount to be determined by the Court for respondents' use and occupancy of the Premises for each and every day respondents remain in possession thereof from the day following the Termination Date up to and including the day on which respondents surrender possession of the Premises to Petitioner.

23. Petitioner lacks written information or notice of any address where respondents may do business other than the Premises and: (a) Three S's and an R, LLC, c/o Mr. Morton Ruderman, Cres Development Company, 50 Salem Street, Lynnfield, Massachusetts 01940; (b)

Three S's and an R, LLC, c/o Cres Development Company, 50 Salem Street, Lynnfield, Massachusetts 01940; (c) Three S's and an R, LLC, c/o Morton Ruderman, 31 Wildwood Drive, Lynnfield, Massachusetts 01940; (d) Morton Ruderman, 31 Wildwood Drive, Lynnfield, Massachusetts 01940; (e) MMR Investments, LLC, 40 Salem Street, Suite One, Lynnfield, MA 01940; (f) Goda Restaurant Corp., c/o Goda Abdelmenan, 115 Fairview Avenue, Jersey City, New Jersey; (g) Goda Restaurants Corp., c/o Marvin David, Esq., 225 Broadway, Suite 1900, New York, New York 10007; (h) Statewide Management at Fordham Road, Inc., 44-27 Purves Street, Long Island City, New York 11101; and (i) Laughing Party Co., LLC, 14 Weyman Avenue, New Rochelle, New York 10805, attn: Melvin Getlan.

**WHEREFORE**, Petitioner requests a final judgment:

- (a) awarding Petitioner a judgment of possession for the Premises and directing the forthwith issuance of a warrant of eviction to remove all respondents and other occupants of the Premises from possession thereof;
- (b) awarding Petitioner a money judgment against respondents in the amount of \$64,251.29 for Rent due under the Lease during the period through December 28, 2007;
- (c) awarding Petitioner a further money judgment against respondents for all use and occupancy due for the Premises during the period from December 29, 2007 through and including such date as Petitioner obtains actual possession of the Premises, in an amount to be determined by the Court;
- (d) awarding Petitioner the attorneys' fees, costs and disbursements incurred by Petitioner in commencing and prosecuting this proceeding, in an amount to be determined by the Court; and

- (c) granting Petitioner such other and further relief as the Court deems just and proper.

Dated New York, New York  
February 12, 2008

**GREENBERG TRAURIG, LLP**  
*Attorneys for Petitioner*  
200 Park Avenue  
New York, New York 10166  
(212) 801-9200


By: 

Heath B. Kushnick, Esq.

VERIFICATION

Heath B. Kushnick, an attorney admitted to practice before the New York State Courts, affirms as follows: I am of counsel to Greenberg Traurig, LLP, attorneys for petitioner Sidley Hasting Corp.; I have read the foregoing Petition and know the contents thereof; the same are true to my knowledge except those matters stated to be upon information and belief and as to those matters I believe them to be true; the grounds for my belief as to all of the foregoing are the books and records of petitioner, its employees and agents, including but not limited to Greenberg Traurig, LLP; and this verification is made by me rather than petitioner because Greenberg Traurig, LLP possesses copies of relevant documents and I am authorized to make this verification pursuant to RPAPL 741.

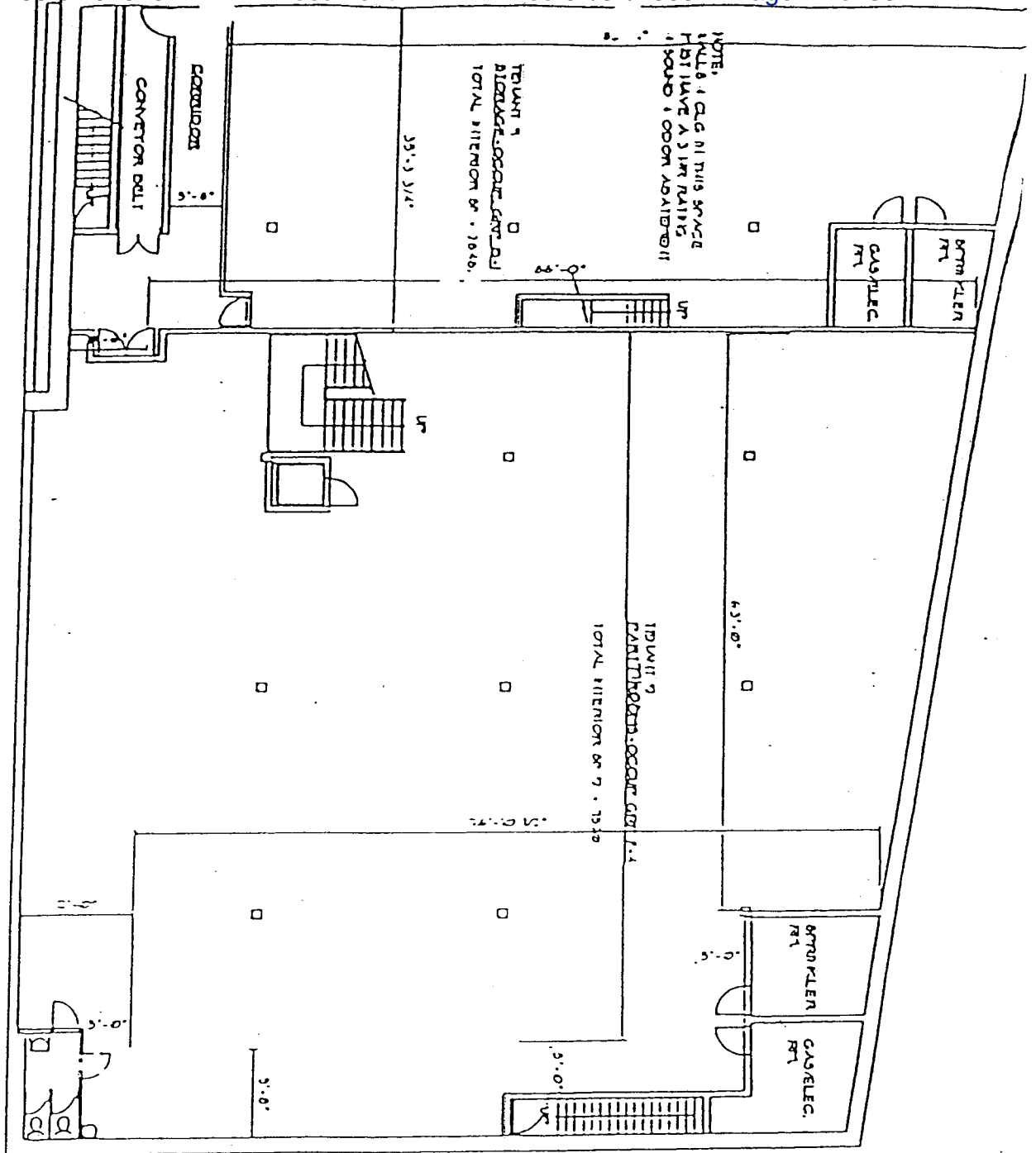
Dated: New York, New York  
February 12, 2008

  
\_\_\_\_\_  
Heath B. Kushnick

**EXHIBIT A TO THE NOTICE OF PETITION**

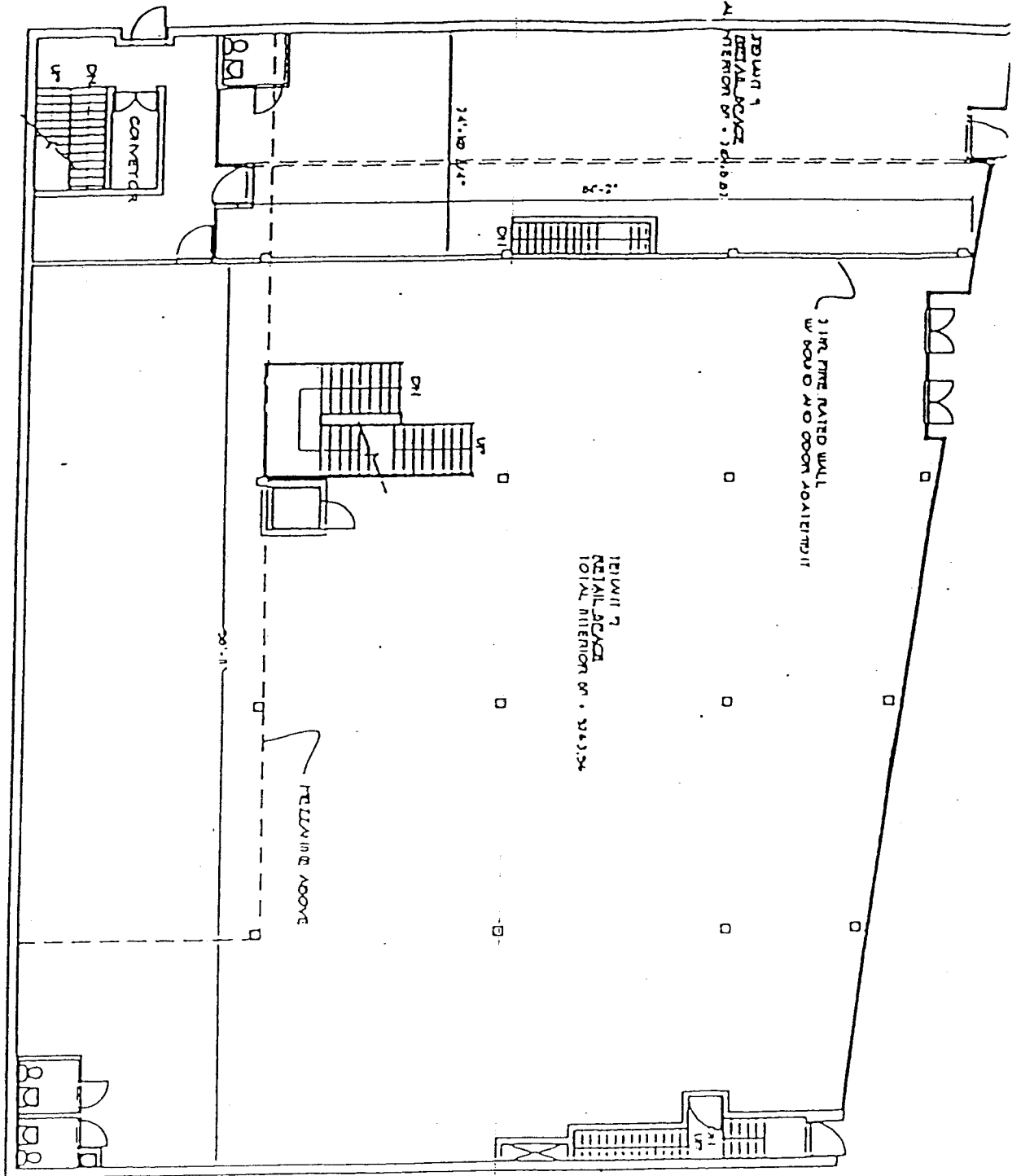
CELLAR PLAN -

SCALE: 1/8" = 1'



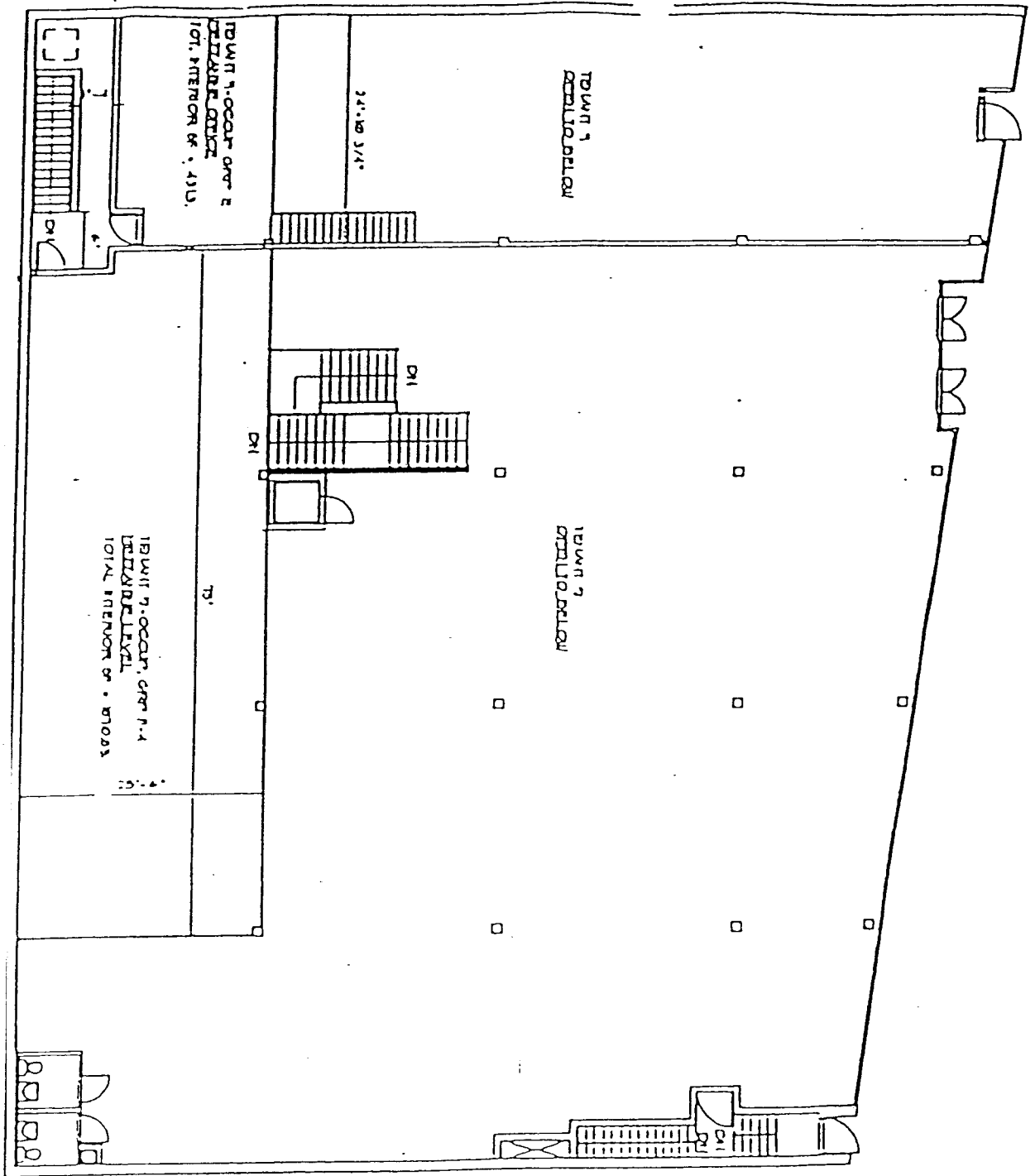
COLLEGE BLVD  
100 EAST FURROW ROAD  
MAY 12, 1978

FIRST FLOOR PLAN -  
SCALE: 1/8" = 1'



Architectural  
FLOOR PLAN  
Architectural  
FLOOR PLAN

MEZZANINE PLAN  
SCALE: 1/8" = 1'



MEZZANINE PLAN  
SCALE: 1/8" = 1'



**EXHIBIT B TO THE NOTICE OF PETITION**

**NOTICE TO CURE**

December 4, 2007

To: **THREE S'S AND AN R, LLC**  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

Re: Agreement of Lease made as of May 1, 1999 (the "**Lease**"), between Sidley Holding Corp. ("**Landlord**"), as landlord, and Three S's and an R, LLC ("**Tenant**"), as tenant, incorporating that certain Agreement of Lease made as of August 10, 1998 (as amended, the "**1998 Lease**"), between Landlord and a former tenant, for portions of the ground floor (sometimes referred to as basement or cellar), first floor, and mezzanine level (collectively the "**Premises**") in the building known as and located at 110-112 East Fordham Road, Bronx, New York 10468.

TAKE NOTICE that Tenant has failed to comply with its obligations under Sections III and IV of the 1999 Lease, Articles 1, 3, 4, 13, 21 and other applicable provisions of the 1998 Lease, which require Tenant, among other things, to timely pay Base Rent, Added Rent and additional rent (collectively, "**Rent**") to Landlord as and when the same became due under the Lease, in that Tenant failed to pay the Rent due under the Lease during the period from October 1, 2007 through December 4, 2007 in the amount of \$64,251.29 (as set forth on the statement annexed hereto, incorporated herein by reference and made a part hereof, the "**Arrears**").

TAKE FURTHER NOTICE that, in accordance with Section 20.02 of the 1998 Lease and other applicable provisions of the Lease, Tenant is required to deliver payment of the full amount of the Arrears to Landlord on or before December 17, 2007 (the "**Cure Date**"), which date is not less than ten (10) days from the date this notice is given.

TAKE FURTHER NOTICE that in the event Tenant fails to deliver payment of the full amount of the Arrears to Landlord on or before the Cure Date, Landlord will exercise its rights

under Section 20.02 of the 1998 Lease and other applicable provisions of the Lease and pursuant to law, and serve a three day notice of cancellation of the Lease (the "Termination Notice") upon Tenant, in which event, upon the expiration of the period of time set forth in the Termination Notice (the "Termination Date"), the term of the Lease will terminate and expire as if the Termination Date was the day fixed in the Lease for the end and expiration thereof, Tenant will remain liable for damages pursuant to applicable provisions of the Lease (including but not limited to past due and future Rent, damages, and Landlord's attorneys' fees, costs and expenses), and Landlord may commence an appropriate action or proceeding to remove Tenant from the Premises and/or commence such other actions and proceedings as Landlord deems appropriate.

**TAKE FURTHER NOTICE** that this notice is without prejudice to and shall not constitute a waiver, release or relinquishment of any of Landlord's claims, defenses, rights or remedies under the Lease, applicable law or otherwise, all of which are expressly reserved.

All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

**SIDLEY HOLDING CORP. Landlord**

By: 

Name: Richard Levine

Authorized Signatory Per Annexed Authorization

cc: **THREE S'S AND AN R, LLC**  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MORTON RUDERMAN**  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MMR Investments, LLC**  
40 Salem Street, Suite One  
Lynnfield, MA 01940

**Sidley Holding Corp.****Three S's & an R  
Arrears Statement**

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGE</u>
October 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	\$755.28
	Past Due (late payment)	\$723.03
	Past Due (legal fees)	<u>\$5,633.33</u>
	October Total:	\$25,457.93
November 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	<u>\$763.74</u>
	November Total:	\$19,110.03
December 1, 2007	Base Rent	\$12,432.94
	Management Fee	\$551.41
	Added Rent (Additional Rent For Initial Sublet)	\$2,500.00
	Real Estate Tax Assessment	\$2,861.94
	Late Payment	<u>\$1,337.04</u>
	December Total:	\$19,683.33
	<b>Total:</b>	<b>\$64,251.29</b>

AUTHORIZATION

SIDLEY HOLDING CORP. ("Sidley"), a Delaware limited liability company, hereby appoints and authorizes Mr. Richard Levine to individually act as its authorized signatory and agent and to execute on behalf of, and in the name of, Sidley: (a) any and all demands and notices permitted under leases, licenses, service contracts, occupancy agreements or applicable law including but not limited to notices to cure, notices of termination, non-payment and holdover notices, and notices terminating monthly tenancies, tenancies-at-will or tenancies-at-sufferance; and (b) pleadings and affidavits relating to tenants, licensees, lessees, licenses, occupancy agreements, stipulations, service contracts, collection of arrears and/or other monies due to Sidley. This authorization is valid for a period of one year from the date of execution unless sooner terminated in writing.

SIDLEY HOLDING CORP.

By:

*Sidney Clyman*  
Name: Dr. Sidney Clyman  
Title: President

STATE OF NEW YORK                    )  
  )s.s.:  
COUNTY OF WESTCHESTER        )

On the 27 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Dr. Sidney Clyman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on this instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

*Virginia S. Brees*  
Notary Public  
VIRGINIA S. BREESE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WESTCHESTER COUNTY  
NO. 018R6139142  
COMMISSION EXPIRES 12/31/2011  
*Virginia S. Brees*

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                      :SS.  
COUNTY OF NEW YORK    )

Salvatore Giambrone, being duly sworn, deposes and says:

1. I am employed by Greenberg Traurig, LLP, attorneys for Sidley Holding Corp.
2. I am not a party to this action, am over 18 years of age and reside in Queens, New York.
3. On the 4<sup>th</sup> day of December, 2007, I served the annexed Notice to Cure by depositing true copies in securely sealed envelopes, into the exclusive care and custody of Federal Express for overnight delivery, addressed as follows::

THREE S'S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

THREE S'S AND AN R, LLC  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

MORTON RUDERMAN  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

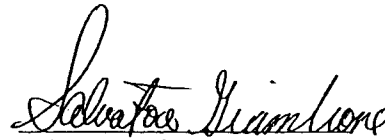
MMR Investments, LLC  
40 Salem Street, Suite One  
Lynnfield, Massachusetts 01940

Sworn to before me this  
6<sup>th</sup> day of December, 2007



NOTARY PUBLIC

HEATH B. KUSHNICK  
Notary Public, State of New York  
No. 02KU6016400  
Qualified in New York County  
Commission Expires 11/16/10



Salvatore Giambrone  
License No. 1133136



**EXHIBIT C TO THE NOTICE OF PETITION**

**NOTICE OF TERMINATION**

December 20, 2007

To: **THREE S'S AND AN R, LLC**  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine levels  
Bronx, New York 10468

Re: Agreement of Lease made as of May 1, 1999 (the "Lease"), between Sidley Holding Corp. ("Landlord"), as landlord, and Three S's and an R, LLC ("Tenant"), as tenant, incorporating that certain Agreement of Lease made as of August 10, 1998 (as amended, the "1998 Lease"), between Landlord and a former tenant, for portions of the ground floor (sometimes referred to as basement or cellar), first floor and mezzanine level (collectively the "Premises") in the building known as and located at 110-112 East Fordham Road, Bronx, New York 10468.

TAKE NOTICE that Tenant defaulted in observing and performing its obligations under Sections III and IV of the Lease, Articles 1, 3, 4, 13, 21 and other applicable provisions of the 1998 Lease, which require Tenant, among other things, to timely pay Base Rent, Added Rent and additional rent (collectively, "Rent") as and when the same becomes due under the Lease, and Tenant failed to cure its default as described in the notice to cure dated December 4, 2007 (a copy of which is annexed hereto as Exhibit A, incorporated herein by reference and made a part hereof, the "Notice to Cure") in that Tenant failed to pay Rent in the amount of \$64,251.29 by December 17, 2007 (the "Cure Date"), which was at least ten (10) days after service of the Notice to Cure upon Tenant.

TAKE FURTHER NOTICE that pursuant to Section 20.02 of the 1998 Lease (made applicable by Section 2.02 and other applicable provisions of the Lease), Landlord hereby elects to terminate the Lease on December 28, 2007 (the "Termination Date"), which date is not less than three (3) days from the date this notice is given, and the Lease, the term thereof and any and

all right, title and interest of Tenant thereunder shall end and expire on the Termination Date as fully and completely as if the Termination Date was the day fixed in the Lease for the end and expiration of the term thereof.

TAKE FURTHER NOTICE that Tenant is required to quit and vacate the Premises in accordance with the terms of the Lease on or before the Termination Date and if Tenant fails to so quit and vacate on or before the Termination Date, Landlord will, among other things, commence an appropriate action and/or proceeding to remove Tenant from the Premises and to recover all past due Rent, the reasonable value of Tenants' use and occupancy of the Premises, attorneys' fees and any other damages incurred by Landlord in accordance with applicable provisions of the Lease and applicable law.

TAKE FURTHER NOTICE that this notice is without prejudice to, and shall not constitute a waiver, release or relinquishment of any of Landlord's claims, defenses, rights or remedies, all of which are expressly reserved.

All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

**SIDLEY HOLDING CORP., Landlord**

By: 

Name: Richard Levine

Authorized Signatory Per Annexed Authorization

cc: **THREE S'S AND AN R, LLC**  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MORTON RUDERMAN**  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MMR Investments, LLC**  
40 Salem Street, Suite One  
Lynnfield, MA 01940

AUTHORIZATION

SIDLEY HOLDING CORP. ("Sidley"), a Delaware limited liability company, hereby appoints and authorizes Mr. Richard Levine to individually act as its authorized signatory and agent and to execute on behalf of, and in the name of, Sidley: (a) any and all demands and notices permitted under leases, licenses, service contracts, occupancy agreements or applicable law including but not limited to notices to cure, notices of termination, non-payment and holdover notices, and notices terminating monthly tenancies, tenancies-at-will or tenancies-at-sufferance; and (b) pleadings and affidavits relating to tenants, licensees, leases, licenses, occupancy agreements, stipulations, service contracts, collection of arrears and/or other monies due to Sidley. This authorization is valid for a period of one year from the date of execution unless sooner terminated in writing.

SIDLEY HOLDING CORP.

By:

*Sidney Clyman*  
Name: Dr. Sidney Clyman  
Title: President

STATE OF NEW YORK                    )  
  } s.s.:  
COUNTY OF WESTCHESTER        )

On the 27 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Dr. Sidney Clyman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on this instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

*Virginia Brees*  
Notary Public  
VIRGINIA S. BREESE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WESTCHESTER COUNTY  
NO. 01865139142  
MY COMMISSION EXPIRES 12/31/2010  
*Virginia Brees*

**-EXHIBIT A-**

**NOTICE TO CURE**

December 4, 2007

To: **THREE S'S AND AN R, LLC**  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

Re: Agreement of Lease made as of May 1, 1999 (the "**Lease**"), between Sidley Holding Corp. ("**Landlord**"), as landlord, and Three S's and an R, LLC ("**Tenant**"), as tenant, incorporating that certain Agreement of Lease made as of August 10, 1998 (as amended, the "**1998 Lease**"), between Landlord and a former tenant, for portions of the ground floor (sometimes referred to as basement or cellar), first floor, and mezzanine level (collectively the "**Premises**") in the building known as and located at 110-112 East Fordham Road, Bronx, New York 10468.

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TAKE FURTHER NOTICE that, in accordance with Section 20.02 of the 1998 Lease and other applicable provisions of the Lease, Tenant is required to deliver payment of the full amount of the Arrears to Landlord on or before December 17, 2007 (the "**Cure Date**"), which date is not less than ten (10) days from the date this notice is given.

TAKE FURTHER NOTICE that in the event Tenant fails to deliver payment of the full amount of the Arrears to Landlord on or before the Cure Date, Landlord will exercise its rights

under Section 20.02 of the 1998 Lease and other applicable provisions of the Lease and pursuant to law, and serve a three day notice of cancellation of the Lease (the "Termination Notice") upon Tenant, in which event, upon the expiration of the period of time set forth in the Termination Notice (the "Termination Date"), the term of the Lease will terminate and expire as if the Termination Date was the day fixed in the Lease for the end and expiration thereof, Tenant will remain liable for damages pursuant to applicable provisions of the Lease (including but not limited to past due and future Rent, damages, and Landlord's attorneys' fees, costs and expenses), and Landlord may commence an appropriate action or proceeding to remove Tenant from the Premises and/or commence such other actions and proceedings as Landlord deems appropriate.

**TAKE FURTHER NOTICE** that this notice is without prejudice to and shall not constitute a waiver, release or relinquishment of any of Landlord's claims, defenses, rights or remedies under the Lease, applicable law or otherwise, all of which are expressly reserved.

All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

**SIDLEY HOLDING CORP. Landlord**

By: 

Name: Richard Levine

Authorized Signatory Per Annexed Authorization



cc: **THREE S'S AND AN R, LLC**  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

**THREE S'S AND AN R, LLC**  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MORTON RUDERMAN**  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

**MMR Investments, LLC**  
40 Salem Street, Suite One  
Lynnfield, MA 01940

**Sidley Holding Corp.****Three S's & an R  
Arrears Statement**

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGE</u>
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	<b>Total:</b>	<b>\$64,251.29</b>

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SIDLEY HOLDING CORP.

By:

*Sidney Clyman*  
Name: Dr. Sidney Clyman  
Title: President

STATE OF NEW YORK                    )  
  } s.s.:  
COUNTY OF WESTCHESTER        )

On the 27 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Dr. Sidney Clyman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on this instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

*Virginia E. Brees*  
Notary Public  
VIRGINIA E. BREESE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WESTCHESTER COUNTY  
NO. 01BR6129142  
MY COMMISSION EXPIRES 12/31/2010  
*Virginia E. Brees*

AFFIDAVIT OF SERVICE

STATE OF NEW YORK     )  
  :SS.  
COUNTY OF NEW YORK    )

Salvatore Giambrone, being duly sworn, deposes and says:

1. I am employed by Greenberg Traurig, LLP, attorneys for Sidley Holding Corp.
2. I am not a party to this action, am over 18 years of age and reside in Queens, New York.
3. On the 4<sup>th</sup> day of December, 2007, I served the annexed Notice to Cure by depositing true copies in securely sealed envelopes, into the exclusive care and custody of Federal Express for overnight delivery, addressed as follows::

THREE S'S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine level  
Bronx, New York, 10468

THREE S'S AND AN R, LLC  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

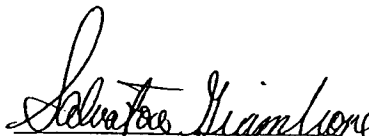
MORTON RUDERMAN  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

MMR Investments, LLC  
40 Salem Street, Suite One  
Lynnfield, Massachusetts 01940

Sworn to before me this  
6<sup>th</sup> day of December, 2007

  
\_\_\_\_\_  
NOTARY PUBLIC

HEATH B. KUSHNICK  
Notary Public, State of New York  
No. 02KU6016400  
Qualified in New York County  
Commission Expires 11/16/10

  
\_\_\_\_\_  
Salvatore Giambrone  
License No. 1133136

Index No.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: NON-HOUSING PART 52

SIDLEY HOLDING CORP.,

Petitioner,

-against-

THREE S'S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and mezzanine levels  
Bronx, New York 10112,

Respondent,

-and-

GODA RESTAURANTS CORP. a/k/a GODA RESTAURANT CORP.  
d/b/a PIZZA HUT, STATEWIDE MANAGEMENT AT FORDAM  
ROAD, INC. d/b/a PIZZA HUT, LAUGHING PARTY CO., LLC,  
"ABC CO." and "XYZ CORP."

Respondent(s).

VERIFIED PETITION

HOLDOVER - COMMERCIAL

TRIAL DATE: FEBRUARY 19, 2008

Law Offices  
Greenberg Traurig, LLP

Attorney for Petitioner  
Heath B. Kushnick, Esq.

Met Life Building  
200 Park Avenue  
New York, NY 10166

212.801.9200  
Fax 212.801.6400  
www.gtllaw.com

NY 238,635,791v1

# **EXHIBIT M**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
  : ss.  
COUNTY OF NEW YORK    )

Deborah Husband-Jones, being duly sworn, deposes and says:

1       I am employed by Greenberg Traurig, LLP, attorneys for Sidley Holding Corp.

2       I am not a party to this action, am over 18 years of age and reside in Bronx, New  
York.

3       On the 3<sup>rd</sup> day of March, 2008, I served the annexed Notice of Motion,

Affirmat on, Affidavit and Exhibits by depositing true copies, in securely sealed envelopes, into  
the exclusive care and custody of Federal Express for overnight delivery, addressed as follows:

BRYER & DAVID  
*Attorneys for Respondent Goda Restaurants Corp.*  
Attention: Marvin M. David  
225 Broadway  
New York, New York 10007  
(212) 369-2530

THREE S'S AND AN R, LLC  
100-112 East Fordham Road  
Portions of the ground floor, first floor  
and mezzanine level  
Bronx, New York, 10468

THREE S'S AND AN R, LLC  
c/o Mr. Morton Ruderman  
Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940

THREE S'S AND AN R, LLC  
c/o Cres Development Company  
50 Salem Street  
Lynnfield, Massachusetts 01940



THREE S'S AND AN R, LLC  
c/o Morton Ruderman  
31 Wildwood Drive  
Lynnfield, Massachusetts 01940

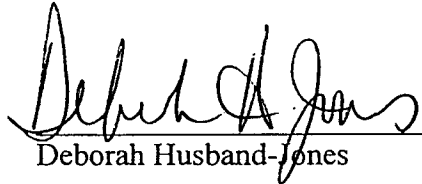
THREE S'S AND AN R, LLC  
c/o MMR Investments, LLC  
40 Salem Street, Suite One  
Lynnfield, MA 01940;

STATEWIDE MANAGEMENT AT FORDHAM ROAD, INC.  
110-112 East Fordham Road  
Portions of the ground floor, first floor  
and mezzanine level  
Bronx, New York, 10468

STATEWIDE MANAGEMENT AT FORDHAM ROAD, INC.  
44-27 Purves Street  
Long Island City, New York 11101

LAUGHING PARTY CO., LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor  
and mezzanine level  
Bronx, New York, 10468

LAUGHING PARTY CO., LLC  
14 Weyman Avenue  
New Rochelle, New York 10805  
Attn: Melvin Getlan

  
Deborah Husband-Jones

Sworn to before me this  
4<sup>th</sup> day of March, 2008

  
NOTARY PUBLIC

SALVATORE GIAMBRONE  
Notary Public, State of New York  
No. 01GI6098207  
Qualified in Queens County  
Commission Expires September 8, ~~2007~~ 2011


**SUPPLEMENTAL AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                      :SS.  
COUNTY OF NEW YORK    )

Deborah Husband-Jones, being duly sworn, deposes and says:

1. I am employed by Greenberg Traurig, LLP, attorneys for Sidley Holding Corp.
2. I am not a party to this action, am over 18 years of age and reside in Bronx, New York.
3. On the 4th day of March, 2008, I served the annexed Notice of Motion, Affirmation, Affidavit, Exhibits and the accompanying Memorandum of Law by depositing true copies, in securely sealed envelopes, into the exclusive care and custody of Federal Express for overnight delivery, addressed as follows:

Scott A. Frank, Esq.  
Arnstein & Lehr LLP  
515 North Flagler Drive  
Sixth Floor  
West Palm Beach, Florida 33401-4323

  
Deborah Husband-Jones

Sworn to before me this  
4<sup>th</sup> day of March, 2008

  
NOTARY PUBLIC

SALVATORE GIAMBRONE  
Notary Public, State of New York  
No. 01GI6098207  
Qualified in Queens County  
Commission Expires September 8, ~~2007~~ 2011

# **EXHIBIT N**

CIVIL COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: NON-HOUSING PART 52

----- X  
SIDLEY HOLDING CORP.,

Petitioner,

– against –

THREE S' S AND AN R, LLC  
110-112 East Fordham Road  
Portions of the ground floor, first floor and  
mezzanine levels  
Bronx, New York 10112,

L&T Index No.: 900282/08

**AFFIDAVIT IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

Respondents,

– and –

GODA RESTAURANTS CORP. a/k/a GODA  
RESTAURANT CORP. d/b/a PIZZA HUT,  
STATEWIDE MANAGEMENT AT FORDHAM  
ROAD, INC. d/b/a PIZZA HUT, LAUGHING PARTY  
CO., LLC, "ABC CO."\* and "XYZ CORP."\*,

Respondent(s).

\* The first name and/or last name of said respondent(s)  
being fictitious and unknown to petitioner, the  
entity(ies) and/or individuals(s) intended being in  
possession of the premises herein described without  
petitioner's knowledge or consent.

----- X  
STATE OF NEW YORK }

ss.:

COUNTY OF DUTCHESS }

Richard Levine, being duly sworn, deposes and says:

1. I am employed by Levine Bros. Management, managing agent of 110-112 East  
Fordham Road, Bronx, New York (the "**Building**") for petitioner Sidley Holding Corp.  
("**Sidley**"). I am fully familiar with the books and records of Sidley pertaining to respondent

Three S's and an R, LLC ("**Three S's**") and respectfully submit this affidavit based on my personal knowledge of the facts in support of Sidney's motion for an order granting summary judgment in its favor.

2. Sidney is a New York corporation (Exhibit A).

3. Sidney is the owner and landlord of the Building (Exhibit B).

4. Pursuant to an Agreement of Lease made as of May 1, 1999 (the "**Lease**") (which Lease incorporates that certain Agreement of Lease made as of August 10, 1998 between Sidney and a former tenant)(Exhibit C), Sidney is the landlord and Three S's was the tenant of commercial space on portions of the ground floor, first floor and mezzanine levels of the Building (as more particularly described in the Lease, the "**Premises**").

5. The Premises are not part of a multiple dwelling.

6. The Premises are not subject to the New York City Rent and Rehabilitation Law or the Rent Stabilization Law of 1969, as amended by Chapter 576 of the Laws of 1974, because they were rented and are used solely for business purposes.

7. Upon information and belief, respondents Statewide Management at Fordham Road, Inc. d/b/a Pizza Hut ("**Statewide Management**") and Laughing Party Co., LLC ("**Laughing Party**") are possibly in possession of all or some portion of the Premises as permitted subtenants of Three S's. See Landlord's Consent to Sublease (Exhibit D). Upon information and belief, Statewide Management was dissolved by proclamation of the Secretary of State published on September 25, 2002 (Exhibit E).

8. Upon information and belief, respondent Goda Restaurants Corp. a/k/a Goda Restaurants Corp. d/b/a Pizza Hut ("**Goda**," and together with Statewide Management and Laughing Party, the "**Subtenants**") is possibly in possession of all or some portion of the

Premises without Sidney's consent. *See* Assignment and Assumption of Lease dated December 20, 2002 between Three S's and Goda (Exhibit F). Sidney did not consent to the assignment and assumption agreement between Three S's and Goda. Nonetheless, Goda apparently took occupancy of the Premises and operates a Pizza Hut restaurant therein.

9. In 2007, Three S's defaulted under the Lease by failing to timely pay fixed and additional rent (collectively, "**Rent**"). As a result, Sidney served upon Three S's a notice to cure dated December 4, 2007 (the "**Notice to Cure**," Exhibit G) demanding payment of \$64,251.29 on or before December 17, 2007 (the "**Cure Date**"). The Notice to Cure advised Three S's that Sidney would serve a notice of cancellation thereby terminating the Lease in the event Three S's failed to timely cure.

10. Three S's failed to cure its default on or before the Cure Date. Accordingly, Sidney served upon Three S's a notice of termination dated December 20, 2007 (the "**Notice of Termination**," Exhibit H) advising Three S's of Sidney's intention to terminate the Lease as of December 28, 2007 (the "**Termination Date**").

11. As a result of Sidney's service of the Notice of Termination, the term of the Lease expired on the Termination Date. Three S's and the Subtenants, however, failed to vacate the Premises on or after that date. Accordingly, Sidney commenced this holdover proceeding by service of a notice of petition and petition dated February 12, 2008 (the "**Petition**," Exhibit I).

12. Sidney has not accepted any payments from Three S's or the Subtenants for the period subsequent to the Termination Date.

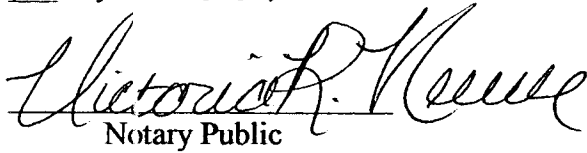
13. Through and including March 4, 2003, Three S's owes Sidney the amount of \$127,867.83 for fixed and additional rent due under the Lease and/or use and occupancy of the Premises (Exhibit J).

14. Accordingly, for the reasons set forth above, as well as those in the accompanying affirmation and memorandum of law, Sidley respectfully requests that its motion be granted in its entirety.



RICHARD LEVINE

Sworn to before me this  
1<sup>st</sup> day of March, 2008.



Notary Public

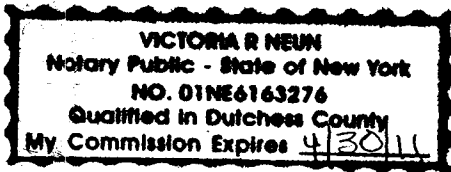


Exhibit J to March 1, 2008 Affidavit of Richard Levine



**Sidley Holding Corp.**

32 Eton Drive

Slingerlands, NY 12159

**Rent Bill**

Date	Invoice #
3/1/2008	156

Bill To
Three S's & an R

Item	Description	Amount
Rent		12,432.94
Management Fee		551.41
Additional Rent		2,500.00
Real Estate Tax		2,861.94
Late Payment		3,189.95
Water Bill	Past Due	924.42
PAST DUE		105,407.17
<b>Total</b>		<b>\$127,867.83</b>

Notice of Motion, Affirmation and additional exhibits omitted

# **EXHIBIT O**

Sidley Holding Corp.  
5 Denim Dr  
Wappingers Falls, NY 12590

## Rent Bill

Date	Invoice #
7/1/2008	168

Bill To
Three S's & an R

Item	Description	Amount
Rent		13,432.94
Management Fee:		551.41
Additional Rent		2,500.00
Real Estate Tax		3,746.04
Late Payment		5,953.84
PAST DUE		198,461.17
Total		\$224,645.40

# **EXHIBIT P**

**CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX PART  
DECISION AND JUDGMENT**

INDEX # 900282/2008  
JUDGMENT SEQ # 001

**52**

SIDLEY HOLDING CORP,

Petitioner(s)

**AGAINST**

THREE S'S AND AN R LLC,  
GODA RESTAURANTS CORP,  
D/B/A PIZZA HUT,  
STATEWIDE MANAGEMENT AT FORDHAM ROAD INC,  
LAUGHING PARTY CO LLC,  
ABC CO,  
XYZ CORP,  
A/K/A GODA RESTAURANT CORP.,  
D/B/A PIZZA HUT,

Respondent (s)

---

**Decision and Judgment is rendered based upon  
a decision made after trial as follows:**

**Judgment of possession is granted in favor of:**

SIDLEY HOLDING CORP,  
and against

THREE S'S AND AN R LLC,  
GODA RESTAURANTS CORP,  
D/B/A PIZZA HUT,  
STATEWIDE MANAGEMENT AT FORDHAM ROAD INC,  
LAUGHING PARTY CO LLC,  
ABC CO,  
XYZ CORP,  
A/K/A GODA RESTAURANT CORP.,  
D/B/A PIZZA HUT,

A counterclaim is granted in favor of the respondent in the amount of \$0.00  
(which if not being entered separately is offset and reflected in the  
total amount due, listed below.)

A money judgment is hereby granted, along with cost and disbursements  
in the amount of \$0.00 in favor of:

SIDLEY HOLDING CORP,  
and against

THREE S'S AND AN R LLC,  
GODA RESTAURANTS CORP,  
D/B/A PIZZA HUT,  
STATEWIDE MANAGEMENT AT FORDHAM ROAD INC,  
LAUGHING PARTY CO LLC,  
ABC CO,  
XYZ CORP,  
A/K/A GODA RESTAURANT CORP.,  
D/B/A PIZZA HUT,

for a total amount of \$0.00

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX PART  
DECISION AND JUDGMENT

INDEX # 900282/2008  
JUDGMENT SEQ # 001

(Monthly use and occupancy is set at \$0.00 per month, as per order,  
stipulation or decision in record.)

Warrant to issue forthwith

Execution STAYED FIVE (5) DAYS

Date 5/14/08

9 PM

Judge, Civil/Housing Court

HON. DONALD A. MILES

Section 5020(c) of the Civil Practice Law and Rules requires that a satisfaction be filed with the  
clerk when the judgment is satisfied. Failure to do so subjects the judgment creditor to penalties.

ENTRY OF JUDGMENT

Judgment entered in accordance with the above on 5/14/08 John Baer

Chief Clerk, Civil Court

Warrant issued to Marshal \_\_\_\_\_ On \_\_\_\_\_

CIV-LT-50(2006)